IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1075 of 2002

to

FIRST APPEALNo 1078 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANJI JOITAJI

Versus

SPL.LAQ OFFICER

Appearance:

1. First Appeal No. 1075 of 2002

MR AJ PATEL for Petitioner No. 1

MR A.J. DESAI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 11/03/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A. MEHTA)

1. These appeals are filed under Section 54 of the Land Acquisition Act, 1894, ("The Act" henceforth) against the judgment & award dated 11th September 2001 in Land Acquisition Reference Case Nos. 275 of 2001 to 278 of 2001, passed by the 5th Jt. Civil Judge (S.D.) Mehsana, granting additional compensation at the rate of Rs.36-00 per sq. meter, together with proportionate cost, interest, solatium and other statutory benefits.

2. The appellants in these appeals are the original claimants, whose lands were acquired for the public purpose of construction of main canal of Narmada Project at the instance of respondent No.2 herein. The Notification under section 4 of the Act was published on 5-12-1991, while Notification under section 6 of the Act was published on 6-6-1992. The Special Land Acquisition Officer, Narmada Project, Unit No. 10, Ahmedabad, i.e. respondent No.1 herein, after following the procedure prescribed under the Act declared his award dated 22-2-1991 under Section 11 of the Act, awarding an amount of Rs.3-90 per sq. meter as compensation against the claim of Rs.50-00 per sq. meter made by the appellants. The appellants, being dissatisfied and aggrieved by the award dated 22-2-1994 under section 11 of the Act, sought reference under section 18 of the Act, which came to be decided as stated hereinbefore.

3. The appellants being aggrieved by the additional compensation granted by the Reference Court by its judgment & award dated 11-09-2001 have preferred these appeals. Mr. A.J. Patel, learned counsel appearing on behalf of the appellants submitted that the compensation awarded by the judgment & award passed by the Reference Court is on the lower side, taking into consideration the fact that the lands of the same village, namely Karannagar, had been acquired in the past and the claimants as well as the acquiring body had come up in cross appeals before this Court, and the award was modified and the claimants therein were awarded compensation at Rs.42-00 per sq. meter, as also Rs.46-00 per sq. meter in different judgments rendered in different First Appeals. The said unreported judgments of this Court rendered in different First Appeals have been placed on record in the compilation submitted by the learned counsel for the appellants, and we shall revert back to the same a little later.

4. The claimants have raised the following grounds for seeking higher compensation :

(A) The lands under the acquisition were irrigated agricultural lands having high fertility.

(B) That the lands in question are utilised for obtaining three crops per year.

(C) That Karannagar village, wherein the lands under acquisition were situated, is connected with Taluka and District Headquarters by pucca roads.

(D) That, Karannagar village has infrastructural facilities like water, electricity, bank, school etc.

(E) Geographically the lands under acquisition were situated in prominent and developed area of the village.

On the basis of aforesaid grounds, it was contended that, the lands under acquisition had various favourable factors raising the potentiality of the lands in question, and hence the award amount was required to be enhanced taking into consideration the market value on the basis of cumulative effect of all the aforesaid factors.

5. Our attention was invited to the deposition of one of the claimants one Shri. Natwarbhai Kalidas Patel, at Exh. 17. It was stated by him that the lands of other claimants were also acquired for the same purpose and he had seen those lands, and the lands under acquisition, as well as those other lands had the same features and characterises in relation to fertility; that identical crops were raised and obtained from both the sets of lands and all the lands in question were irrigated lands.

6. The Reference Court in the impugned judgment came to the conclusion that, despite the various pieces of evidence produced by the claimants, there was no evidence to show that the market value of the acquired lands would be Rs.50-00 per sq. meter on the date of Notification under section 4 of the Act, as claimed by the land holders. However, the Reference Court has principally based its judgment on the judgment & award in respect of the Land Acquisition Reference No. 133 of 1999 (exh. 22) as the lands acquired under the said judgment were of

the same village Karannagar and the Notification under section 4 of the Act in relation to those lands was published on 1-8-1991. Thus, according to the Reference Court, on the basis of the aforesaid judgment & award in Land Acquisition Reference No. 133 of 1999 (exh. 22) the market value of the acquired lands in the said acquisition proceedings was fixed at the rate ofRs.39-90 per sq. meter, and the same should be adopted as the basis for awarding identical amount as compensation for the lands under acquisition in the present proceedings. Accordingly, by the impugned judgment & order dated 11th September 2001 the Reference Court awarded additional compensation of Rs.36-00 per sq.meter , i.e. in all Rs.39-90 per sq. meter, taking into consideration the amount of compensation awarded at Rs.3-90 per sq. meter awarded by the Special Land Acquisition Officer.

7. Mr. A.J. Patel, learned advocate appearing on behalf of the appellants submitted that, alongwith the aforesaid Land Acquisition Reference No. 133 of 1999, there were other References being Land Acquisition Reference No. 549 of 1998 to 559 of 1998 and 564 of 1998 wherein the Reference Court had awarded Rs.39-90 per sq. meter as compensation in relation to the lands acquired under Notification issued under Section 4 of the Act on 1-8-1991, and the matters were carried in appeal before this Court, both by the State and the original claimants, wherein the appeals filed by the State came to be dismissed; while the cross appeals filed by the claimants came to be partly allowed by enhancing the compensation to Rs.46-00 per sq. meter. In support of the aforesaid submissions, our attention was invited to the judgment dated 16-10-2001 passed in First Appeal No. 3876 of 2001, with First Appeal Nos. 1521 to 1535 of 2001, 3896 of 2001 to 3907 of 2001, 3876 of 2001 to 3892 of 2001, with Cross Objection Nos. 154 of 2001 to 166 of 2001, 128 of 2001 to 139 of 2001 and Cross Objection Nos. 140 of 2001 to 153 of 2001; (Coram: B.C. Patel, J [as he then was] and Mr. Justice S.D. Dave). Mr. Patel has also placed reliance on a portion of the aforesaid judgment relating to First Appeal No. 1521 of 2000 to 1535 of 2000 to point out that, in those appeals the compensation had been enhanced to Rs.42-00 per sq. meter and the Notification under Section 4 in that case had been issued on 22-6-1990. Thus, according to Mr. Patel, applying the principle of 10 % enhancement per year, 15 % should be enhanced from the base figure of Rs.42-00 per sq. meter as declared in the said judgment, as there was difference of about a year & half between the date of Notification under section 4, i.e. 22-6-1990 and 5-12-1991, the later being the date of Notification under

Section 4 in the present proceedings. It was therefore submitted by Mr.Patel that, applying the aforesaid formula, the appellants would be entitled to compensation at the rate of Rs.48-00 per sq. meter in place of Rs.39-90 per sq. meter awarded by the Reference Court.

8. Mr. A.J. Desai, learned AGP, appearing on behalf of the respondents submitted that, the Reference Court had placed reliance upon Land Acquisition Reference Case No. 133 of 1999 and the said case had not been carried further by way of appeal by the claimants in those proceedings, and hence the compensation awarded at the rate of Rs.39-90 per sq. meter had become final. That, the Reference Court had awarded identical sum as compensation to the appellants and the appellants could not have any grievance as there was difference of only four months between the dates of Notification under Section 4 of the Act; in case of Land Acquisition Case No. 133 of 1999 the date of Notification under Section 4 was 1-8-1991, while in the case of the appellants the Notification under Section 4 was published on 5-12-1991. Mr. Desai, therefore, submitted that, the judgment & award dated 11-9-2001 was correct, both on facts and in law, and does not require to be disturbed.

9. From the facts which have come on record, it is apparent that the judgment in Land Acquisition Reference Case No. 133 of 1999 (exh. 22) on which reliance has been placed in the impugned judgment & award has become final, there being no appeal filed against the said judgment. However, in Land Acquisition Reference Case No.549 of 1998 to 559 of 1998 and 564 of 1998 the judgment of the Reference Court was carried in appeal and the said appeals came to be registered as First Appeal No. 3896 of 2001 to 3907 of 2001 and connected matters which came to be decided by the common judgments dated 16-10-2001. Admittedly in case of both the Land Reference Cases Notification under Section 4 was issued on 1-8-1991. Thus, we have before us two sets of judgments in relation to Section 4 Notifications having same date, i.e. 1-8-1991, wherein in one set (L.A. Reference No. 133 of 1999) compensation awarded at the rate of Rs.39-90 has become final, and in another set (L.A. Reference No. 549 of 1998 and connected cases) compensation was awarded at the rate of Rs.46-00 per sq. meter. In these circumstances, it is settled position in law that a view which is beneficial to the claimants should be preferred and adopted.

10. Hence, taking into consideration the fact that this Court in the aforesaid unreported decision dated

16-8-2001 has awarded compensation at the rate of Rs.46-00 per sq. meter in relation to the lands acquired under Notification under Section 4 of the Act dated 1-8-1991, we prefer to adopt the same basis and figure of compensation, as it is common ground between the parties that the lands in acquisition pertained to the same village and are acquired for the same public purpose, namely Narmada Main Canal and there are no other distinguishing features between the lands acquired in the earlier proceedings and the lands under acquisition in the present proceedings. In light of the fact that the Notifications under Section 4 are only distanced by a period of four months, we do not find it necessary to disturb the figure of compensation fixed by this Court at Rs.46-00 per sq. meter in the earlier proceedings, and we adopt the same figure in relation to the lands acquired in the present proceedings under Notification of Section 4 dated 5-12-1991.

11. All the appeals are therefore allowed to the aforesaid extent, namely the total compensation payable to the appellants (original claimants) would be at the rate of Rs.46-00 per sq. meter, in relation to the lands acquired by Notification under Section 4 dated 5-12-1991 as against the compensation fixed at the rate of Rs.39-90 per sq. meter by the Reference Court in the impugned judgment & award. The claimants would be entitled to the interest, solatium and all other statutory benefits on the aforesaid amount of Rs.46-00 per sq. meter as compensation in relation to the lands under acquisition with proportionate cost.

12. The appears are accordingly partly allowed.

13. Considering that the acquisition was initiated in December 1991 and possession of the lands was taken some time in 1994, and the fact that the claimants have not been paid any amount, except that awarded under Section 11 of the Act, vide award dated 22-2-1994; the respondents are directed to make the payment of the enhanced compensation within a period of six months from today, which would include the total amount of compensation with interest, solatium and all other statutory benefits.

Dt: 11-3-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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